



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/10769/2012
AA/10771/2012
AA/10773/2012
AA/10774/2012

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 24 June 2013

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

I B

M F

U U

B V

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

I direct that the appellants be identified only by the initials given above

Representation:

For the Appellants: No appearance or representation

For the Respondent: Ms M Tanner, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Uzbekistan. Two of the appellant are the children of the other two appellants. They are about 6 and 4 years old respectively and in all the circumstances I have decide to follow the First-tier Tribunal by directing that they appellants are identify only by the initials indicated above.
2. They appeal against a decision of the First-tier Tribunal dismissing their appeals against a decision of the respondent to refuse to vary their leave to remain and to remove them from the United Kingdom. It is accepted

the decision to remove them, in the light of the present law, was wrong and the appeals against the removal decision should be allowed. This does not mean that the appellants are entitled to remain in the United Kingdom but that the respondent must make a further decision if she wants to remove them.

3. Permission to appeal was refused by the First-tier Tribunal. It was granted by Upper Tribunal Judge Kekić who indicated in her grant of permission that the real point of concern was the decision to remove and she suggested that the appeals should be disposed of properly, solely by allowing the appeal to the extent indicated. This was not acceptable to the appellants and Judge Kekić decided that it would be inappropriate to hear the subsequent appeal as she might have been thought to have prejudiced herself by giving the directions that she did. Accordingly, the appeal came before me.
4. The appellants did not attend. I do not know why they did not attend. The papers show they were given proper notice of the hearing and in the absence of any explanation I resolved to continue with the hearing.
5. The First-tier Tribunal's determination is very thorough and helpful. The scene is set by the opening paragraphs which I set out below:
 - "1. The appellants are citizens of Uzbekistan, born, respectively, on XX XX 1979, XX XX 1984, XX XX 2007 and XX XX 2009. The first two appellants are husband and wife and the remaining appellants are their children.
 2. The first appellant was originally granted leave to enter the UK on a student visa on 1 May 2003. He thereafter obtained various extensions of that leave until 31 October 2002. His wife, the second appellant, was issued with a student visa on 6 October 2006 and had subsequently been granted leave to remain as the appellant's dependent spouse in the UK until 30 October 2012. The two children also have leave as dependants until 30 October 2012, having arrived in the United Kingdom on 29 February 2012.
 3. On 3 October 2012, the appellants applied for asylum. On 15 November 2012 those applications were refused, they were refused any variation of their leave to remain, and a removal decision was made as to their return to Uzbekistan. They now appeal against that decision."
6. The First-tier Tribunal accepted that the first appellant had, on one of his many visits to Uzbekistan been arrested, interrogated and detained about his activities in the United Kingdom. It is said that there was concern about his renewed interest in practising Islam. It is, I find, unremarkable that national security forces became interested in a person who, on a visit to the United Kingdom, had become more devout in his observance of Islam. Many devout Muslim are pious, peace loving people. Some are not.
7. I do not suggest that detention overnight in a police station would be at all agreeable but it is not persecution and it was not said to be persecution.
8. The First-tier Tribunal Judge considered very carefully the evidence and submissions before it. The key findings are at paragraph 22 where it was noted that the real concern of the first appellant is that he would not be able to practise the Muslim faith as he wished to do because he could not

wear religious dress without attracting attention of a kind that could lead to a degree of societal disapproval.

9. The First-tier Tribunal Judge looked for but was not given evidence indicating quite what the consequences would be. There was something described as “administrative detention” but that was not explained and the First-tier Tribunal Judge was not able to say whether such detention could be described properly as persecution. In any event the first appellant made it clear that he would in fact not wear religious dress. In Uzbekistan only old people wore such garments. The first appellant would attend the official mosques and offer his prayers wearing the ordinary fashionable clothes of the day.
10. The First-tier Tribunal Judge was satisfied that for this particular appellant this conformity with social mores would be a restraint on his desire to express his religious convictions in the way that he wanted to do but it was a restraint at the peripheries of his expression of religion. He would certainly be able to conduct himself in a way that identified himself to anybody who wanted to know that he is a Muslim and he would not be restricted in any way from attending mosque and carrying out religious observances associated with attending the mosque.
11. The First-tier Tribunal Judge decided that this kind of restriction, although annoying for the appellant, did not amount to persecution.
12. The First-tier Tribunal Judge had reminded himself of the decisions in **HJ (Iran)** but took the view that the kind of restriction imposed was not the kind of restriction that was identified there as a restriction on religious observance. It would be quite different if the appellant lived in a country where he could not practise as a Muslim and so had to pretend he had no religious convictions or different religious convictions to avoid persecution. Such a person would almost certainly be a refugee. The First-tier Tribunal found that this person would not be able to observe religious dress and that did not amount to persecution in his case.
13. Although the grounds are quite extensive and are presented under five headings this is really the point that they challenge in slightly different ways. Ground 3, I think, is immaterial. It criticises the judge for referring to decided cases that were not cited before him. We are all presumed to know the law and although it is unhelpful sometimes to look at cases about which argument has not been heard, there is nothing in the grounds that suggested this was a material error in this case and I am not persuaded that it was.
14. I note in ground 1 that there is a particular reference to no findings being made on the appellant’s claim to follow a banned cleric named Nazarov but that does not impress me because there were clear findings that the appellant could join a mosque and worship and pray. I do not see what being a follower of Nazarov adds to the mix which would support a different conclusion.
15. The other grounds purport to challenge the First-tier Tribunal’s findings and approach leading to the conclusion that the restriction associated with not

being able to wear religious dress without attracting disapproval was persecutory. The First-tier Tribunal Judge concluded that it was not and I am wholly unpersuaded there was any error of law either in the analysis of the evidence or the application of the law on that approach.

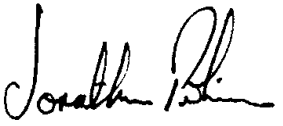
16. It follows therefore that I dismiss the appeals against the decision of the First-tier Tribunal to dismiss the appeals except against the decision to remove.

Decision

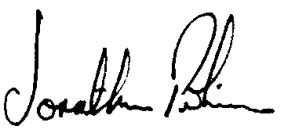
The appeal against the decision to remove the appellants is allowed and the decision of the First-tier Tribunal is set aside. If the respondent wishes to remove the appellants she must make a fresh decision.

Otherwise the appeal is dismissed.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 28 June 2013



4